

AMENDED IN SENATE APRIL 21, 2005

AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 369**

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**Introduced by Senator Simitian**

February 17, 2005

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An act to add Part 3.7 (commencing with Section 71175) to Division 34 of the Public Resources Code, relating to ecological labeling.

LEGISLATIVE COUNSEL'S DIGEST

SB 369, as amended, Simitian. Ecological labeling.

Existing law provides labeling requirements for various products, including, but not limited to, prohibiting a person from selling a plastic bag that is labeled as "biodegradable," "compostable," "degradable," or as otherwise specified, unless, at the time of the sale, the plastic bag meets a current ASTM standard specification for the term used on the label.

This bill would require the California Environmental Protection Agency to establish a Commission on Ecological Labeling and would require the commission to enter into a contract, using a competitive bid process, with a vendor, to award the Green Bear Eco-Label to a product or service that meets the criteria adopted by the commission or is subject to a determination by a specified panel of experts.

The bill would require the ~~commission~~ vendor to adopt criteria for awarding a label to a product or service and would specify a procedure for adopting and revising the criteria.

The bill would allow a producer or distributor to present a proposal or application to the vendor for an award of a label to a product or service. The bill would require the vendor to convene an independent panel of experts to make certain findings based on the documentation

submitted by the applicant and supporting market and environmental research criteria. The bill would require the panel, upon receipt of a proposal or application, to prepare a preliminary finding of whether the product or service should be awarded a label, and would require the vendor to conduct a hearing regarding the finding made by the panel. *The bill would set certain minimum standards, as specified, that a product must meet before being awarded a label.* The bill would require the vendor to award a label to a product or service, if the vendor determines the product or service meets or exceeds the environmental criteria adopted by the vendor.

The bill would provide that if a producer or distributor presents a proposal or application to the vendor for an award of a label to a product or service for which the commission has not adopted criteria, the vendor would be required to consult with the panel of experts, as specified, conduct a hearing, and award a label to a product or service, if the vendor determines the product or service has significantly less adverse environmental impacts than a competing product or service.

The bill would authorize the vendor to charge a fee to a producer or distributor who presents a proposal or application to the vendor for an award of a label to a product or service. The bill would require the commission, *in consultation with the vendor*, to set the fee, as specified, and an additional 3% surcharge to cover the administrative costs of the commission.

The bill would authorize the vendor to expend the fee revenues, ~~upon appropriation by the Legislature~~, to implement the contract.

The bill would require the vendor to forward the surcharge to the agency, for deposit in the Eco-Label Fund, which the bill would create in the State Treasury. The bill would authorize the agency to expend the revenues in the Eco-Label Fund, upon appropriation by the Legislature, for the commission's costs in implementing the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Part 3.7 (commencing with Section 71175) is
- 2 added to Division 34 of the Public Resources Code, to read:

1 PART 3.7. GREEN BEAR ECO-LABEL ACT

2  
3 CHAPTER 1. LEGISLATIVE FINDINGS AND INTENT

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5 71175. The Legislature finds and declares all of the  
6 following:

7 (a) Producers and distributors should be encouraged to  
8 produce and distribute environmentally sound products,  
9 including goods and services.

10 (b) Market forces are excellent arbiters of consumer choice  
11 when consumers have sufficient and accurate information upon  
12 which to base their decisions.

13 (c) Polling indicates that a large percentage of consumers, if  
14 given reliable information, will choose an environmentally  
15 superior product over another similar product, even if the cost is  
16 higher.

17 (d) There is much disinformation and false labeling of  
18 products, so that consumers are generally confused as to which  
19 product may be better or less damaging to the environment.

20 *71175.1. It is the intent of the Legislature that:*

21 (a) *This act sets the minimum standards that must be met for a*  
22 *license to be issued.*

23 (b) *The California Environmental Protection Agency may*  
24 *enter into a contract with one or more vendors to implement this*  
25 *part.*

26 (c) *Within a particular product category, the vendor can issue*  
27 *zero, one, or numerous licenses, depending on the number of*  
28 *submissions that meet the minimum standards.*

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30 CHAPTER 2. DEFINITIONS

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32 71176. For purposes of this part, the following definitions  
33 shall apply:

34 (a) “Agency” means the California Environmental Protection  
35 Agency.

36 (b) “Commission” means the Commission on Ecological  
37 Labeling established pursuant to Section 71177.

38 (c) “Label” means the Green Bear Eco-Label that may be  
39 awarded by the vendor pursuant to this part.

1 (d) “Vendor” means the entity awarded a contract by the  
2 Commission on Ecological Labeling pursuant to Section 71177.

3  
4 CHAPTER 3. GREEN BEAR ECO-LABEL REQUIREMENTS

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6 71177. (a) The agency shall establish a Commission on  
7 Ecological Labeling to prepare a request for a proposal to enter  
8 into a contract with a vendor to award the Green Bear Eco-Label  
9 pursuant to this part. The request for a proposal shall authorize  
10 the vendor to charge a fee pursuant to Section 71181.

11 (b) Before issuing a request for a proposal pursuant to  
12 subdivision (a), the commission shall develop performance  
13 criteria for the vendor’s implementation of the contract that shall  
14 be annually achieved by the vendor.

15 (c) The commission shall enter into a contract pursuant to this  
16 section using a competitive bid process, with either a profit or  
17 not-for-profit entity, to award the Green Bear Eco-Label pursuant  
18 to this part. The contract shall be for a term of five years, except  
19 that the commission shall terminate the contract, upon 90 days  
20 written notice, if the vendor does not achieve the performance  
21 criteria developed pursuant to subdivision (b).

22 71178. (a) ~~The commission~~ *vendor* shall, in consultation with  
23 nongovernmental environmental organizations, scientific,  
24 economic, standardization, consumer protection and health care  
25 institutions, adopt criteria pursuant to this section for awarding a  
26 label to a product or service.

27 ~~(1) The criteria shall require the product or service to meet all~~  
28 ~~of the following requirements:~~

29 ~~(A) Fully fulfill the same function as other products or~~  
30 ~~services having a similar use or purpose.~~

31 ~~(B) Impose a smaller environmental burden than similar~~  
32 ~~products or services, during the product’s or service’s entire life~~  
33 ~~cycle, taking use of raw material, manufacture, product use, and~~  
34 ~~disposal into consideration.~~

35 ~~(C) Reduce environmental burdens in other ways, so as to~~  
36 ~~contribute significantly to environmental conservation without~~  
37 ~~greatly reducing the product’s or service’s suitability for use,~~  
38 ~~maintenance, and safeness.~~

39 ~~(2) The criteria shall encourage and recognize reduced~~  
40 ~~environmental impacts, and outline the environmental and~~

1 performance characteristics that a product or service is required  
2 to meet to be awarded a label pursuant to this part.

3 ~~(3) The criteria shall be feasible.~~

4 ~~(b) For each type of product or service for which criteria is~~  
5 ~~adopted, the commission shall establish a committee composed~~  
6 ~~of relevant stakeholder groups to ensure that all relevant~~  
7 ~~technical issues are addressed, the scientific validity of the~~  
8 ~~criteria is maintained, and the economic feasibility of the criteria~~  
9 ~~is taken into account.~~

10 ~~(e)–~~

11 ~~(b)~~ When adopting criteria pursuant to this section, the  
12 ~~commission~~ *vendor* shall do all of the following:

13 (1) Conduct research into the product's or service's life cycle  
14 to outline environmental, technical, market, and economic  
15 considerations associated with the product category.

16 (2) Issue a draft criteria that addresses the environmental  
17 issues identified in the research.

18 (3) Provide a four to eight week period for public review of  
19 the draft criteria and distribute the draft criteria directly to  
20 stakeholders.

21 (4) Consider all comments submitted to the ~~commission~~  
22 *vendor* during the review period conducted pursuant to paragraph  
23 (3) and revise the criteria accordingly.

24 (5) After the review period is completed, publish the final  
25 criteria.

26 ~~(d) (1) The commission~~

27 ~~(c) (1)~~ *The vendor* may revise any criteria adopted pursuant to  
28 this section at any time if significant technical or market  
29 developments occur that justify revising the criteria.

30 ~~(2) The commission~~ *vendor* shall review the criteria adopted  
31 pursuant to this section at least once every three years to ensure  
32 the criteria continues to be relevant and stringent, and may  
33 reconfirm, revise, or revoke the criteria in accordance with this  
34 part.

35 (3) When revising criteria pursuant to this subdivision, the  
36 ~~commission~~ *vendor* shall consult with the producer or distributor  
37 that produces or distributes a product or service that has received  
38 a label pursuant to this part and with any other interested party.

1 71178.1. *The vendor shall not award a Green Bear*  
2 *Eco-Label to a product that does not meet all of the following*  
3 *minimum standards:*

4 (a) *The manufacturer of the product shall have in place an*  
5 *end-of-life program that would require the manufacturer to take*  
6 *the responsibility for recycling the product or that the design of*  
7 *the product is such that it is fully recycleable.*

8 (b) *The manufacturer has an established business plan for*  
9 *ensuring that the product is recycled.*

10 (c) *The product contains no chemicals listed pursuant to*  
11 *Section 25249.8.*

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#### CHAPTER 4. ECO-LABEL AWARD PROCEDURE

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15 71179. (a) A producer or distributor may present a proposal  
16 or application to the vendor for an award of a label to a product  
17 or service.

18 (b) The vendor shall convene an independent panel of experts,  
19 which shall meet quarterly. The panel shall make any findings  
20 required pursuant to this part based on the documentation  
21 submitted by the applicant, and supporting market and  
22 environmental research. If a similar product or service has been  
23 certified previously, the panel shall require an applicant's product  
24 or service to meet the established or equivalent criteria.

25 (c) Upon receipt of a proposal or application, the panel of  
26 experts shall prepare a preliminary finding of whether the  
27 product or service should be awarded a label, in accordance with  
28 the criteria adopted pursuant to Section 71178.

29 (d) The vendor shall conduct a hearing regarding the finding  
30 made by the panel pursuant to subdivision (c).

31 (e) After conducting a hearing pursuant to subdivision (d), the  
32 vendor shall award a label to a product or service, if the vendor  
33 determines the product or service meets or exceeds the  
34 environmental criteria specified in the criteria adopted pursuant  
35 to Section 71178.

36 ~~71180. (a) If a producer or distributor presents a proposal or~~  
37 ~~application to the vendor for an award of a label to a product or~~  
38 ~~service for which the commission has not adopted criteria~~  
39 ~~pursuant to Section 71178, the vendor shall consult with the~~  
40 ~~panel of experts specified in subdivision (b) of Section 71179.~~

1 The panel shall issue a finding to the vendor regarding whether  
 2 the product or service has significantly less adverse  
 3 environmental impacts than a competing product or service and  
 4 should be awarded a label pursuant to this part.

5 (b) The vendor shall conduct a hearing regarding the finding  
 6 made by the panel pursuant to subdivision (a).

7 (e) After conducting a hearing pursuant to subdivision (a), the  
 8 vendor shall award a label to a product or service pursuant to this  
 9 section, if the vendor determines the product or service has  
 10 significantly less adverse environmental impacts than a  
 11 competing product or service.

12  
 13 ~~CHAPTER 5. FEES~~

14  
 15 *CHAPTER 5. FEES*

16  
 17 71181. (a) The vendor may charge a fee, in the amount  
 18 specified by the commission, to a producer or distributor who  
 19 presents a proposal or application to the vendor for an award of a  
 20 label to a product or service pursuant to Section 71179.

21 (b) The commission, *in consultation with the vendor*, shall set  
 22 the fee in amount that is sufficient to cover the vendor's costs to  
 23 implement this part, including a reasonable profit margin, and an  
 24 additional three-percent surcharge to cover the administrative  
 25 costs of the commission. Except as provided in subdivision (c),  
 26 the vendor may expend the fee revenues collected pursuant to  
 27 this section to carry out the contract entered into with the  
 28 commission.

29 (c) The vendor shall forward the surcharge to the agency, for  
 30 deposit in the Eco-Label Fund, which is hereby created in the  
 31 State Treasury. The revenues in the Eco-Label Fund may be  
 32 expended by the agency, upon appropriation by the Legislature,  
 33 for the commission's costs in implementing this part.